

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

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IN RE:  
TARIFF FILING TO INTRODUCE  
LATE PAYMENT CHARGES

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DOCKET NO. 99-00574  
EXECUTIVE SECRETARY

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OBJECTIONS TO LIMITS IMPOSED BY THE EXECUTIVE SECRETARY AND REQUEST  
TO EFFECT DISCOVERY IN ACCORD WITH THE TENNESSEE RULES OF CIVIL  
PROCEDURE

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Comes the Consumer Advocate Division ("Consumer Advocate") Office of the Attorney General & Reporter to object to the imposition of discovery limits by the Executive Secretary. The Consumer Advocate Division also requests that discovery be effected in accordance with the rules of civil procedure. For cause the Consumer Advocate Division would show that the limits which the Executive Secretary seeks to impose are contrary to law and public policy.

On or about October 18, 1999, the Consumer Advocate Division received a "Notice" from the Executive Secretary of the agency which "directed" the parties to adhere to certain limits of case preparation.<sup>1</sup> The Consumer Advocate Division was not invited to participate nor did it participate in the discussions regarding the directive.

The Consumer Advocate Division subsequently filed a Motion relating to the directive. In addition, we submit the following objections. The Consumer Advocate Division contends that the limits imposed by the Executive Secretary are unlawful. T.C.A. § 4-5-311 (a) provides that an

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<sup>1</sup>We are not aware of the source of the directive and object to all provisions of the notice to the extent they violate any procedure in Tenn. Code Ann. § 4-5-301 et. seq.

**FILE**

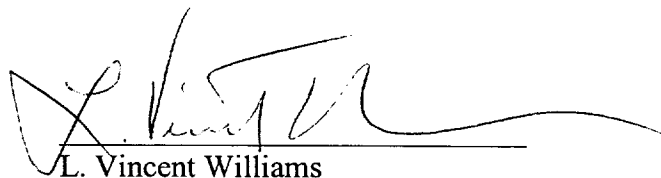
administrative judge "shall" effect discovery in accordance with the Tn. Rules of Civil Procedure. The Consumer Advocate Division has no indication that the Executive Secretary is the Administrative Law Judge appointed for this case. Moreover, the limits imposed are not made in accordance with the Tennessee Rules of Civil Procedure. The TRA has no rules which limit discovery to 30 interrogatories nor does it have any rules which limit the entirety of discovery to 30 requests for information.

In addition, the preemptive limitations on discovery are contrary to the public policy in T.C.A. § 65-4-123 that regulation shall protect consumers. In support of this position we are filing relevant portions of a paper published by the NRRI (National Regulatory Research Institute). The paper contains a study which included Tennessee and concluded that the most important determinant of consumer protection is an agency's willingness to gather and consider information.

In this case relevant information is not in the possession of the agency and the limits imposed materially impair the development of information relevant to the protection of consumers.

The Consumer Advocate Division therefore prays that the case limitations directed by the Executive Secretary be overruled and that the agency permit the Consumer Advocate Division to effect discovery in accordance with the Tennessee Rules of Civil Procedure.

Respectfully Submitted,

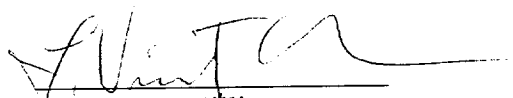


L. Vincent Williams

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been mailed postage prepaid to the parties listed below this 29<sup>th</sup> day of October, 1999.

Guy Hicks, Esq.  
BellSouth Communications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201-3300



E. Vincent Williams

# The National Regulatory Research Institute

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June 30, 1998

Mr. Archie R. Hickerson, CPA  
Director  
Consumer Advocate Division  
Office of Attorney General  
Cordal Hall Building  
425 5th Avenue, N.  
Nashville, Tennessee 37243-0500

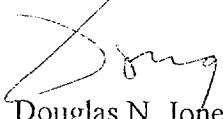
Dear Mr. Hickerson:

As part of our Occasional Paper series, this report was drawn from a recent dissertation by the author in completion of her doctoral program in the School of Public Policy and Management here at The Ohio State University. (Dr. Zearfoss worked at NRRI for six years during her graduate program.)

The study considers the relationship between the structural characteristics and skill levels at a state PUC and the regulatory performance of a commission in terms of strictness in protecting captive ratepayers. In doing so it examines thirty-eight decisions in the telecommunications area made by PUCs in thirty-four states and D.C. for the period 1987-1994.

I think you will find it of interest.

Best regards,

  
Douglas N. Jones  
Director and Professor  
of Regulatory Economics

P.S. Incidentally, I expect that this is the last mailing you will receive from me as Director — but not the last helpful product from NRRI.

jjs  
enclosure

# The National Regulatory Research Institute

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OCCASIONAL PAPER #23

THE STRUCTURE OF STATE UTILITY  
COMMISSIONS AND PROTECTION OF THE  
CAPTIVE RATEPAYER: IS THERE A  
CONNECTION?

JUNE 1998

**OCCASIONAL PAPER # 23**

**THE STRUCTURE OF  
STATE UTILITY COMMISSIONS AND  
PROTECTION OF THE CAPTIVE RATEPAYER:  
IS THERE A CONNECTION?**

by

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June 1998

This report was prepared by the National Regulatory Research Institute (NRRI) with funding provided by participating member commissions of the National Association of Regulatory Utility Commissioners (NARUC). The views and opinions expressed herein do not necessarily state or reflect the views, opinions, or policies of the NRRI, the NARUC, or NARUC member commissions.

## EXECUTIVE SUMMARY

From the late 1980s until the present, strict economic regulation of public utilities, which has acted as a stand-in for competition, has been challenged. As competition has entered the market the incumbent local exchange companies have petitioned state regulatory commissions for less restrictive forms of regulation. In response, several state regulatory commissions have authorized more relaxed forms of regulation, granting companies varying amount of regulatory freedom.

Recognizing that there was not sufficient competition at the local level to protect captive ratepayers from companies that were (and still are) largely monopoly providers, states also adopted one or more provisions to protect captive ratepayers. The theory proposed in this research attempts to model the "protection variation" in commission decisions.

While there is a considerable body of literature on regulatory decision making, the dominant theories have emphasized the influence of external factors on commissioners, which largely result in capture. Underlying these theories is the assumption that resources translate into influence. The theory proposed in this research is that while resources are necessary in order to influence commission decisions, they are not sufficient. Instead, their effects are mediated by two conditions: one, the structural characteristics of each state commission, which enable it to acquire and analyze information and two, the attributes of the type of consumer safeguards, e.g. a rate freeze or quality-of-service standards with attached financial penalties, which commissions could have adopted.

The guiding research hypothesis is that the greater the ability of the commission to acquire and analyze information, the more likely it is to enact more stringent measures to protect the captive ratepayer.

The study's conceptual framework emphasizes three dimensions of agency structure (resources, analytical ability and commissioner motivation), two environmental dimensions (political and demographic) and five dimensions of regulatory decisions (freedoms granted with regard to setting of prices and retention of earnings and restrictions imposed with regard to setting of prices, maintenance of service quality, and plan length/plan review). Unlike several previous studies, agency structure and regulatory environment are broadly conceived and regulatory performance is measured, not in the level of the commission's response to the utility but in the level of their protection of the captive ratepayer.

The research design is a comparative state policy analysis, using 38 decisions made by commissions in 34 states and the District of Columbia over the 1987 to 1994 period. To reduce the number of variables, a number of indices were developed, modeled on those used in past research efforts. Multivariate analysis was used and the research findings provide strong support for the proposed research hypothesis.

The major implications of this research are two. (1) This research suggests that commissions react not just to political pressure and economic incentives, but also to information. Indeed, this research asserts that information is a significant determinant in the decision making process. (2) Where the general public has neither the knowledge nor the understanding to take a position with regard to an issue, a regulatory commission with greater resources and more professional personnel is more likely to be its champion than is a commission with fewer resources and less professional personnel.



greater detail following the presentation of the factors, both within and outside the commission, determined to influence regulatory policy.

Overall, this theory will generate hypotheses suggesting that specific characteristics of both the state regulatory commission and the issue under consideration will have significant influence on the nature of regulation. Since these hypotheses are not readily comprehensible without an understanding of the relevant factors and assumed commissioner motivation, they are presented at the end of these discussions.

## **Relevant Factors**

The theory presented in this research is based on the premise that resources are necessary but not sufficient to influence policy. It is also necessary to have the ability and the motivation to use those resources.

In order to test the null hypothesis, that structural factors of commissions do not affect policy decisions, it is necessary to account for those sources of influence external to the commissions as well as the effects of the commission itself on the decision-making process. This research proposes to model the influence exerted by the major participants on the decision to enact measures to protect captive customers when adopting AFORs.

Because of the central role this theory gives to regulatory commissions, the methods by which commissions influence policy will be discussed in detail prior to those influences external to the commission.

### ***Internal Factors***

To understand how or why commissions might want to move policy in a different direction from that of other regulatory participants requires some examination of regulators' incentives.

### Commissioners' Objectives

The selection of utility commissioners is a political process.<sup>25</sup> Whether commissioners are elected or appointed, there are financial interests supporting or challenging potential candidates.

The main participants in the regulatory process, other than the commission, are the utilities, large commercial interests, the public, the legislature and the governor. The response of each of these groups, if negative, can seriously impair the commission's ability to perform and fulfill its obligations. For example, decisions which adversely affect the public through increased rates can result in publicity embarrassing to other public officials; or in public displeasure which manifests itself in the voting booth. If utilities are seriously displeased they may lobby the legislature to cut a commission's budget or limit its authority. Given this array of powerful participants in the regulatory contest, each of whom can curtail a commission's powers, it is reasonable to assume that a major or primary objective of commissioners is to act in such a way that no such curtailment occurs.

### Commissioners' Motives

This proposed theory assumes that a primary objective of commissioners is to remain in office and to maintain the necessary political strength to be effective while in that office. As a consequence, commissioners desire that their decisions appear to be equitable since should they appear to be biased, their ability to remain in office and be effective would be threatened. On a less cynical note, it is believed that commissioners have motivations other than self-interest, such as fairness and equity and a concern for

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<sup>25</sup> Patrick J. Mann and Walter J. Primeaux, "Elected versus Appointed Commissioners: Does It Make A Difference in Utility Prices?", in *Adjusting to Regulatory, Pricing and Marketing Realities*, Proceedings of the Institute of Public Utilities Fourteenth Annual Conference (Morgantown, WV: West Virginia University, 1983) 56-72; and Louis M. Kohlmeier, Jr., *The Regulators* (New York: Harper and Row, 1969), 47-52. Kohlmeier's reference is to commissioners and staff at the federal level, but the methods of appointment and the effect of political pressure on state commissioners is similar.

the public interest which would motivate them to want their decisions to actually be fair and equitable, not just appear to be so or be done for crass reasons.

Accepting this assumption of a commissioner's primary objective leads to the conclusion that they will not knowingly harm ratepayers in order to favor the utilities. This concern arises either out of their own ideology or the threat of possible loss of political effectiveness. In either case, regulators cannot afford to make decisions which unduly favor one group over another.

In terms of consumer protection, the areas in which consumers require protection from the utility are those concerning rates and quality of service. It is reasonable to assume that if the commission perceived a need to provide protection to the captive ratepayer, the situation requiring such a decision would most likely place the company and the captive ratepayer on opposite sides. Consequently a decision to protect the captive ratepayer is often also a decision to oppose the company and may force the commission to pit its resources against those of the utility company.

#### Commissioners' Access to Information and Protection of the Captive Ratepayer

Unless it is assumed that regulatory decisions are already predetermined by virtue of industry influence or personal ideology, the central role of information in decision making must be acknowledged. Without the necessary information, the commission is unable to make the most efficient or equitable decision.<sup>26</sup> Accepting this basic premise is key to understanding the manner in which structure mediates motives.

If information is crucial to regulatory decisions, the control of information, in terms of quality and quantity, offers a means of influencing decisions. Theorists have postulated that an agency's autonomy is affected by the amount of information it is able to acquire about the firms it regulates<sup>27</sup> and that the acquisition, accuracy and quality of

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<sup>26</sup> M. E. Porter and J. F. Sagansky, "Information, Politics and Economic Analysis," *Public Policy* 24 (Spring, 1976): 263-307.

<sup>27</sup> Wesley A. Magat, Alan J. Krupnick and Winston Harington, *Rules in the Making* (Washington, D.C.: Resources for the Future, 1986), 53.

the information significantly affect commission decisions.<sup>28</sup> William Gormley's descriptive study of regulatory politics credits the public's perception that information was a key element affecting agency decisions as the driving force behind the creation of offices of consumer advocates.<sup>29</sup> Consumer advocates were seen as the means by which information favorable to consumers could be brought before commissions and affect regulatory decisions. Gormley states, "If regulated industries dominate the regulatory process, it is through the control of information, not personnel."<sup>30</sup> Thus, the greatest resource of commissions to ensure that both utilities and consumers are treated equitably is their ability to acquire and analyze information.

The large LECs, which are usually the BOCs, are considered by regulatory observers to be the single most powerful influence in regulatory decision making. They enjoy this position primarily because of their financial wealth and attendant political clout. They have vast resources, considerable motivation, impressive organization, and a formidable amount of information, much of it complex and highly technical. In the regulatory process, the lawyers, economists, engineers, and accountants employed by the company can present substantive amounts of information in support of the company's proposals or in an attack on the proposals of other parties. The company's proposals, such as those for alternative regulation, often contain descriptions of the benefits their proposed actions will confer on the public.

Given the underlying rationale for regulation, that it is needed to protect the common good from the excesses of capitalism or private interest, prudence suggests that a company's proposals and claims of public benefit be examined circumspectly. To make such an examination requires expertise to both acquire and analyze relevant information.

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<sup>28</sup> Porter and Sagansky, "Information, Politics."

<sup>29</sup> William Gormley, Jr. "Nonelectoral Participation as a Response to Issue-Specific Conditions: The Case of Public Utility Regulation," *Social Science Quarterly* 62, No. 3, September 1981).

<sup>30</sup> Gormley, *The Politics of Public Utility Regulation*, 31.

Without the necessary expertise furnished through the commission's own staff or through contracted services, utility companies may succeed in having proposals adopted which appear to be in the public interest but actually work to further the well-being of the company at the expense of the ratepayer.

To deny company proposals, or even to significantly rework them, requires expertise and information. This is because of the amount of information and expert analysis presented by the company as well as the political power utility companies can wield. Commissions may be forced to accept company proposals unless they are able to publicly demonstrate the potentially undesirable consequences of such proposals.

When commissions are able to acquire the necessary information, submit it to analysis, and forecast possible outcomes for both the ratepayer and the utility, they have the means to challenge the claims of the utility and forge a decision which also protects the interest of the captive ratepayer. This is in accordance with both Gormley's and Mitnick's arguments that the autonomy of a commission is directly related to its ability to access and process information.<sup>31</sup> Without the ability to analyze and interpret factual information, the commission may be unable to challenge the utility's counterproposals and/or denials which are fashioned to weigh the balance of benefits in the company's favor.

In summary, commissioners have as a primary objective staying in office, which gives them a motive to act in a manner which protects the interests of the ratepayer as well as those of the utility. However, their ability to do so is dependent on their access to information. In specifying in greater detail those factors which determine the influence of commissions on decisions to protect the captive ratepayer, it should be remembered that not all commissioners are equally constrained by the above described objective. Rather the importance the commissioners give to this objective and the attendant motive to protect the captive ratepayers' interests may vary with ideology, training and experience.

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<sup>31</sup> Gormley, *The Politics of Public Utility Regulation*, 31; and Mitnick, *The Political Economy*.

Given the above discussion, those measurable aspects of a commission which may affect its policy-making decisions to protect the captive ratepayer will be identified as determinants of its resources, its abilities, or its commissioners' motives.

### Resources

While information is an essential factor in commission decisions, it is not the only force shaping those decisions. Of equal importance are the financial resources available to the commission and the structure which determines the means by which such resources can be accessed.

Where there is an adequate supply of financial resources, the agency will be able to attract to itself knowledgeable personnel with sufficient expertise to acquire and analyze necessary information.<sup>32</sup> Regulation scholars frequently address the decision-making capacity of agencies in terms of their available resources.<sup>33</sup>

The connection between adequacy of resources and susceptibility of commissions to outside influence was recognized in much earlier work seeking to understand regulatory decision-making behavior.<sup>34</sup> Several of these pioneering researchers attributed regulatory failure to underfunded and understaffed commissions, in which there was inadequate expertise available to the commission to analyze and decide complex technical issues associated with utility regulation. As to why such a situation existed or was allowed to continue, Robert Cushman postulates that such circumstances were the result of legislatures which did not "desire aggressive

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<sup>32</sup> Gormley, *The Politics of Public Utility Regulation*, 29; and Mitnick, *The Political Economy*, 212.

<sup>33</sup> David Welborn, *The Governance of Federal Regulatory Agencies* (Knoxville: University of Tennessee Press, 1977), 63; Teske, "Interest and Institutions;" Mitnick, *The Political Economy*; and Gormley, *The Policies of Public Utility Regulation*.

<sup>34</sup> James W. Fesler, *The Independence of State Regulatory Agencies* (Chicago, IL: Public Administration Service, 1942); and Marver Bernstein, *Regulating Business by Independent Commission* (Princeton, N.J.: Princeton University Press, 1955).

enforcement of regulatory policy" and could justify the small size with concerns for protecting the taxpayer from the costs of large government bureaucracy.<sup>35</sup>

For the commission as organization, resources such as overall budget and number of staff improve a commission's ability to acquire and analyze information. Measuring salary levels for commissioners recognizes that adequate compensation is required to attract and retain qualified people needed to make fair and reasonable judgements.<sup>36</sup>

### Abilities

The means by which commissioners challenge proposals before them or propose their own rests partly on their access to information and partly on the complexity and professionalism of their own organization which improves their ability to make use of information. Having research facilities, such as computers and a research library, and research personnel available on-site should improve a commission's ability to use information.

Both the quality and quantity of agency staff have been viewed as important factors in agency decisions. This importance is explained by both the technical complexity of regulatory decisions and the perceived nature of bureaucratic decision making. "Technical expertise is needed if the bureaucracy is to confront complex issues with timeliness and precision."<sup>37</sup> Organizational complexity refers to an agency's specialization. Jeffrey Cohen explains that "Complexity provides a degree of specialization—a division of labor—that enhances the agency's ability to tackle large,

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<sup>35</sup> Robert E. Cushman, *The Independent Regulatory Commissions* (New York: Oxford University Press, 1941), 497.

<sup>36</sup> Berry, "Utility Regulation in the States;" Heather Campbell, "The Politics of Requesting: Strategic Behavior and Public Utility Regulation," *Journal of Policy Analysis and Management* 15, No. 3 (1996): 395-423; and Gormley, *The Politics of Public Utility Regulation*. Both Berry and Gormley construct indices to measure commission professionalism and commission resources on the premise that these attributes of the commission affect commission decisions.

<sup>37</sup> Gormley, *The Politics of Public Utility Regulation*, 29.

difficult tasks and to understand and utilize technical information."<sup>38</sup> Given the benefits of such a division of labor with regard to technical information, this research is particularly interested in whether there is a telecommunications staff as opposed to rate or utility analysts employed to analyze rate proposals for any utility. Heather Campbell also takes this factor into account in measuring the resources of a commission with an explanation similar to Cohen's. "It seems likely that people who specialize in telecommunications issues will be more efficient at making use of agency resources and at understanding the information provided by the regulated telephone firm."<sup>39</sup>

Although there is some agreement that staff professionalism is an important factor in understanding agency decision making, the manner in which it impacts the process is debated. William Berry and Barry Mitnick view professionalism as an agency resource which helps prevent industry capture.<sup>40</sup> Gormley postulates that the aggregate number of professional staff are less important than the types of professions represented by the staff. Given that each profession has its own perspective as well as expertise, the diversity of views represented by a varied staff composition provide a greater potential resource for decision makers.

In an examination of influence on commission decision making, Gormley found that commissioners were more responsive to staff members than governmental consumer advocates.<sup>41</sup> Gormley points out two possible reasons for this. First and most important, senior staff are often appointed by commissioners rather than selected through the civil service network. Other things being equal, one would expect that senior staff chosen in such a manner would be in agreement with a commissioner's value preferences. The proximity of staff to commissioners provides an opportunity for

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<sup>38</sup> Cohen, *The Politics of Telecommunications Regulation*, 90.

<sup>39</sup> Campbell, "The Politics of Requesting," 411-412.

<sup>40</sup> Mitnick, *The Political Economy*, 212; and Berry, "An Alternative to the Capture Theory," 543.

<sup>41</sup> Gormley, *The Politics of Public Utility Regulation*, 138.



them to shape a commissioner's issue priorities, as well as vice versa. As Gormley explains:

The staff plays many important roles in the public utility regulatory process. The staff educates commissioners and explains bewildering concepts from the fields of economics, engineering, accounting, and law. As an extension of its educational role, the staff analyzes proposals submitted by utility companies, public advocates, and others. In addition, the staff develops its own policy proposals and offers recommendations to the commissioners. Although much staff activity is behind the scenes, the staff actively participates in public hearings on which the record of each case is based. After these hearings, the staff interprets the positions of other parties to the commissioners, who lack the time to read every transcript and every brief. Finally, the staff writes the opinions rendered by commissioners, choosing the precise words that will constitute the commission's point of view.<sup>42</sup>

Given that commissioners often work under time constraints, they are forced to forgo a goal-optimizing approach of examining all possible alternatives and rather "satisfice" with those presented to them by their staff.

In addition to increasing the agency's information gathering and analytical ability, thus reducing their vulnerability to outside influence, the size and professionalism of staff have other implications. Berry explored the relationship between level of staff professionalism<sup>43</sup> and protection of the captive ratepayer, particularly the very poor and determined that the more professional the commission, the more likely rate structure decisions would favor the interests of the captive ratepayer. Gormley also found that there is greater participation by the public in energy rate cases in states with less professional public utility commissioners. Gormley explains this result as the perception by citizens' groups that if they do not intervene, "they cannot count on a highly

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<sup>42</sup> Ibid.

<sup>43</sup> Professionalism was defined on two indices: (1) operating resources, consisting of size and salary of staff and computer usage and (2) recruitment activity, consisting of four dimensions, including method of commissioner selection, years of service by commissioner, existence of staff job training, and employee job protection. Berry, "Utility Regulation in the States," 270-271.

professional public utility commission to rescue them from the grip of high energy rates by matching its expertise against that of utility company lawyers and consultants."<sup>44</sup>

Professionalism refers to the formal training of staff. Berry defines professionalized personnel as those who "have both formal educational training and the ability and willingness to follow up the training by keeping up with innovations in the field."<sup>45</sup> In choosing factors to measure the professionalism of regulatory commissions, Berry borrowed from indices developed by John Grumm in 1971.<sup>46</sup> Grumm wanted to measure the professionalism of state legislatures and made this determination.

Some legislatures may be characterized as highly professional. By this I mean that their members and their committees are well staffed; good informational services are available to them; a variety of services and aids, such as bill drafting and statutory revisions, are maintained and well supported; the legislators themselves are well paid, tend to think of their legislative jobs as full time or close to it, and regard their legislative role as a professional one.<sup>47</sup>

While aspects of the professionalism of the organization can be measured in the financial resources available to the commission and its access to computers, as well as the availability of research personnel and research materials, the professionalism of the staff can be measured in terms of salary. Although only a single measure, a few researchers on legislative professionalism considered it the best available single measure.<sup>48</sup>

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<sup>44</sup> Gormley, "Nonelectoral Participation," 533.

<sup>45</sup> Berry, "An Alternative To the Capture Theory," 542.

<sup>46</sup> John G. Grumm, "The Effects of Legislative Structure on Legislative Performance," in *State and Urban Politics*, eds. Richard I. Jofferbert and Ira Sharkansky (Boston: Little, Brown, 1971), 298-322.

<sup>47</sup> *Ibid.*, 309.

<sup>48</sup> John E. Chubb, "The Political Economy of Federalism," *American Political Science Review* 68:1118-24; and Grumm, "The Effects of Legislative Structure," 309.

## CHAPTER 6

### CONCLUSIONS

#### The Research Question

This research was directed at answering the question: "Does commission structure affect regulatory decisions? If so, under what circumstances?" In order to answer those questions, regulatory decisions made by 38 commissions to protect captive ratepayers when granting a LEC greater regulatory freedom were analyzed. Before discussing the conclusions of this research, the research question being addressed needs to be restated.

Past regulatory scholars, such as Bernstein, Kolko, Stigler, Pelzman and Posner have questioned the ability and/or willingness of regulators to act in such an even-handed manner. Rather, they have asserted that commissioners and commission staff are either more inclined to protect the interests of the companies than the consumers because the companies are better able to compensate them for their efforts (capture theory); or are willing to sell their regulatory power to the highest bidder (economic/interest group theory).

These theories are premised on the assumption that self-interest maximization is, ultimately, the driving force behind regulatory decisions. What these theories have ignored are the effects of a commission's ability to acquire and analyze information on its regulatory decision making, the specific attributes of the issue under consideration, and how those two factors interact to affect commission decisions.

In addition, while acknowledging the influence of resources, especially those of the utility, on commissions, the effect of utilities lobbying legislatures, with the intention of having legislatures influence commissions, has received little systematic study.

## Testing of Hypotheses

The guiding hypothesis of this research has been that the ability of a commission to acquire and analyze information would be a significant determinant in commission decisions to protect the captive ratepayer. This was qualified by hypothesizing that certain attributes of the issue under consideration, that is, its level of complexity and public scrutiny, would modify the effect of information, in general, on the decision-making process.

In assessing a commission's ability to competently handle complex and technical information, several aspects of commission structure were measured. Among these were a commission's financial resources, its information processing capability, the possible motivations and ideological leanings of its commissioners, and its average staff salary, used as a proxy for staff professionalism.

To control for the influence of outside forces, some of which have played a prominent role in the predominant theories of regulatory decision making, political, interest group, and demographic factors were also measured. In this way, the influence of the utilities, consumer advocates, business interests, the legislature, the governor, and the demographics of the state measured by socioeconomic profiles were accounted for in the analysis.

## *Empirical Results*

The empirical results of this research strongly support the proposed theory, that both commission structure and issue attributes affect regulatory decisions. Moreover, there is an interaction between these two factors. When the issue under consideration is *high* in complexity and *low* in public scrutiny, commissions with more professional staff are more likely to make decisions to protect the captive ratepayer. Also, factors measuring *commission structure* are a more significant influence on commission

decisions than those measuring *political* and *environmental* factors when the issue is high in complexity and low in public scrutiny.

This research also attempted to model the effects of the BOCs on commission decisions and the presence of the BOCs in states where the commission reports to the legislature or the governor. Since the only empirical measurement of the presence of the BOC was the number of BOC-controlled access lines, results were not expected to be robust, although the relationship of the BOC to the adoption of consumer safeguards was expected to be negative. The multivariate analyses gives credence to the assumption that BOCs do influence state legislatures, which, in turn, influence commission decisions. Results show a negative relationship between the presence of the BOCs in those states where the commission reports to the legislature and the adoption of consumer protections. Given the crude measures used to test this hypothesis, the 10 percent level of significance suggests a far stronger relationship.

Overall, the following observations are worthy of notice.

- (1) Commissions do not just react to political pressure and economic incentives when making decisions. Information is also a significant determinant in the decision-making process. In fact, commission decision making is more affected by the ability of the commission to acquire and analyze information than by the influence of external factors when the issue is high in complexity and low in public scrutiny.
- (2) Although influenced by external factors, regulators are not captured by the utility or special interests. Instead, they appear to be significantly responsive to their constituency. This is demonstrated by the fact that the index of demographic factors is the single best predictor of state regulatory decisions to protect the captive ratepayer. Specifically, the higher the level of income and the more urban the state, the more likely the commission is to adopt measures to protect the captive ratepayer. A further indicator that commissioners are not captured is the significant and robust relationship between the level of freedom granted the companies and the consumer safeguards adopted. In short, regulatory commissions strike a balance between the demands of the utility and the ratepayer.

- (3) Although the evidence is not significant at the 5 percent level, there is enough to suggest that the BOCs do influence commission decisions through the legislature in those states where the commission formally reports to it.
- (4) Although the research reviewed in Chapter 3 indicates there is no consistent significant difference between rate decisions made by elected and appointed commissioners, statistical analysis confirms that elected commissioners are more likely to adopt more stringent safeguards to protect captive ratepayers than appointed ones, although not more likely to adopt rate freezes or adopt other consumer safeguards.

## Contributions

This research makes three contributions to the study of regulatory decision making, each one an argument against self-interest maximization as the single most significant explanatory force driving regulators.

The most notable contribution is the demonstration of commissioners' concern for ratepayers. Because there is so much money involved in regulatory decisions, the theories suggesting regulation can be purchased and that the inevitable loser in such transactions is the captive ratepayer have had high intuitive appeal and a fair amount of empirical support. However, all of these studies, without exception, have based such conclusions on commission decisions about rates and rate structures.

This study, by contrast, chose as the dependent variable commission decisions made specifically to protect the captive ratepayer from potential abuses by a utility. The results of this analysis were two. One, when armed with the proper information because of competent staff and adequate financial resources, commissioners chose to protect the captive ratepayer. And they made this choice in the face of opposition and political pressure, with little to gain personally. Two, no matter what the situation with regard to pressures and inducements, commissioners have strived to balance their decisions such that neither the utility nor the consumer is unduly rewarded or penalized.

The second contribution is to give credibility to what regulatory staff have known for some time, that commissioners are not unduly influenced by the BOCs but legislatures and governors can be. The pressure which elected officials can apply to commissions has been described in earlier chapters. Because such pressure directly affects the powers and finances of commissions, as well as the positions of the commissioners themselves, it can be expected to influence regulatory decisions. The empirical evidence furnished by this research supports the belief that BOCs may influence regulators, but more indirectly, by lobbying legislatures and governors, than directly.

The third contribution of this research is that it has examined regulatory decisions to protect the captive ratepayer within a larger context than most other research examining regulatory decisions. Incorporated into this analysis are factors which attempt to measure the political, organizational, and demographic factors determined by other regulatory researchers to be significant influences in regulatory decision making.<sup>1</sup> In contrast, most other research studying regulatory decision making has limited the scope of its inquiry, either to one or two factors measuring commissioner motivations, such as whether commissioners are elected or appointed, or to a few specific factors. Few have tried to account for the range of influences operating in the regulatory environment and measured in this study.

In summation, the research herein has offered clear and statistically significant evidence that commissioners are responsive to the needs of captive ratepayers even in the face of serious opposition; that the lobbying of legislatures by utilities may affect the decision-making procedures of the commissions; and that even when the numerous influences which make up the regulatory environment are taken into account, the ability of the commission to acquire and analyze information is the most significant factor affecting decisions to protect the captive ratepayer.

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<sup>1</sup> See Chapter 2 above.